

**251.485 Forward pricing (delayed pricing) contracts.**

- (1) A forward pricing (delayed pricing) contract means an executory contract which shall be in a form and contain terms the department shall adopt by administrative regulation pursuant to KRS 251.480. The forward pricing (delayed pricing) contract shall be executed by the licensed grain establishment and the producer, or by their authorized representatives, not later than thirty (30) days after the first delivery of grain is received under the forward pricing (delayed pricing) contract. The licensed grain establishment shall maintain a file of executed forward pricing (delayed pricing) contracts that are available for inspection at any reasonable time by the department. The licensed grain establishment shall keep records and ledgers which the department deems necessary to document the licensed grain establishment's obligations to the producer under a forward pricing (delayed pricing) contract. The licensee shall provide reports, forms, and other evidence the department shall adopt by administrative regulation to document the storage and marketing of grain under the forward pricing (delayed pricing) contract.
- (2) Except as otherwise provided in subsection (3) of this section, a licensed grain establishment which purchases grain under a forward pricing (delayed pricing) agreement shall at all times maintain the grain in storage, rights in the grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of the licensed grain storage establishment's unpaid obligations for all grain that it has purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. The obligation shall be secured or represented by one (1) or more of the following:
  - (a) Maintenance of the grain in storage in the licensed grain establishment's warehouse or storage facilities;
  - (b) Rights in grain as evidenced by a receipt or ticket for storage of the grain under a bailment agreement in another warehouse approved by the department; or
  - (c) Proceeds from the sale of grain as evidenced or represented by one (1) or more of the following:
    1. Funds held in a separate account for the benefit of all unpaid producers of grain delivered under a forward pricing (delayed pricing) contract with the separate account existing in a state or federal licensed financial institution or a lending agency of the federal Farm Credit Administration;
    2. Short-term investments held in time accounts for the benefit of all unpaid producers of grain delivered under a forward pricing (delayed pricing) contract with state or federal licensed financial institutions or a lending agency of the federal Farm Credit Administration; or
    3. Other evidence of unencumbered assets as may be acceptable to the department, including an irrevocable letter of credit or surety bond.
- (3) The licensed grain establishment handler account required by subsection (2) of this section shall be deemed grain or the proceeds for grain arising from unpaid

obligations for all grain purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. The Commissioner shall have a priority lien upon the property or assets required to be maintained in the licensed grain establishment's grain handler account as provided in subsection (2) of this section. The Commissioner shall, when he questions a licensed grain establishment's ability to pay producers for grain purchased, or when he determines that the licensed establishment does not have sufficient net worth to satisfy indebtedness, after giving notice to the owner or agent of the owner, prohibit the transfer or disbursement of any grain, property, or assets maintained in the licensed grain establishment handler account, except for the satisfaction of unpaid obligations for grain that has been purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. Disbursements shall be made under the direction of the Commissioner to grain producers on a pro rata basis. An action to enforce the priority lien created by this subsection may be brought in the name of the Commissioner or the Kentucky Grain Insurance Corporation in the Franklin Circuit Court.

- (4) The licensed warehouse establishment and the producer may at the time a forward pricing (delayed pricing) contract is executed mutually agree and waive the payment of compensation from the Kentucky Grain Insurance Fund authorized by KRS 251.670. The waiver shall be made in writing at the time the forward pricing (delayed pricing) contract is executed and shall be made in a manner prescribed by the Commissioner and filed with the department within ten (10) days thereafter. Upon the waiver, the grain sold pursuant to the forward pricing (delayed pricing) contract shall be excluded from the coverage of the Kentucky Grain Insurance Fund and the producer shall be exempted from the assessment at KRS 251.640(1) for the amount of grain covered by the contract. The licensed grain establishment shall not be required to maintain rights in the grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of the licensed storage establishment's unpaid obligation relating to the amount of grain exempted from the payment of compensation from the Kentucky Grain Insurance Fund.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 76, sec. 1, effective July 14, 1992.